IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1049 of 1996

with

CRIMINAL APPEAL No 25 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAYJIBHAI VAJABHAI BARIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1049 of 1996
   MRS SHILPA J UNWALLA for appellant
   MR KC SHAH, ld.Addl.Public Prosecutor for Respondent
2. Criminal Appeal No. 25 of 1997
   MR KC SHAH, ld.Addl.Public Prosecutor for appellant
   MRS SHILPA J UNWALLA for respondent

CORAM : MR.JUSTICE K.R.VYAS

and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/11/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE K.R.VYAS)

The appellant Rayjibhai Valabhai Bariya has filed Criminal Appeal No.1049 of 1996 challenging the order of his conviction and sentence passed by the learned Sessions Judge, Panchmahal, at Godhra, sentencing him to suffer Rigorous Imprisonment for seven years and a fine of Rs.500/-, in default to undergo Rigirous Imprisonment for one year for the offence punishable under Section 307 of the Indian Penal Code. The State of Gujarat has filed Criminal Appeal No.25 of 1997 for enhancement of the aforesaid sentence. Since the same judgment and order of conviction is under challenge, both these appeals are disposed of by this common judgment.

2. The appellant accused Rayjibhai Valabhai Bariya is the husband of the complainant Kailashben, PW2-Exh.9. The accused was charged for the offence punishable under Section 307 of the Indian Penal Code. It was charged against the accused that on 12.2.1996 at about 7.00 p.m., when she was preparing food at the house, the accused with an intention to commit murder of his wife Kailashben, took her at the well of one Udebhai Nanabhai Parmar, located at the outskirts of the village and threw her into the well by giving a push. Thereafter, he pelted stones at her and thus caused injuries to her. The accused pleaded not guilty to the charge levelled against him. The learned Sessions Judge, Panchmahal, at Godhra, after considering and appreciating the evidence on record, held that the prosecution has successfully established the guilt against the accused and convicted and sentenced him as stated in the earlier part of this judgment.

3. The complainant Kailashben in her evidence has stated that on the relevant date in question, while she was preparing food, her husband, i.e. the accused came and told her to accompany him for the purpose of searching out the money which he lost and before taking her out of the house, she was slapped and asked her to search near the well. It is stated that when she reached near the well, her husband, i.e. the accused lifted her and threw her into the well. According to her, after some attempt, when she came out of water, she could catch hold of an iron pipe in the well. Thereafter, her

husband brought a rope and threw it at her and told her to catch hold of it, but she did not do so because of fear. According to her, her husband asked her as to still she is alive and pelted bricks at her which resutled in her sustaining injuries on head as well the back portion of the shoulder. She remained in the well for the entire night and even in the morning also her husband pelted bricks at her. In the early morning hours, she heard the voice of one Nanabhai Koyabhai and requested him to take her out. Thereafter, the villagers came there and with the help of a small cot, she was taken out and was initially taken to Ghokhaba Hospital and thereafter she was shifted to Godhra Hospital. She was treated in the hospital for about more than one and a half months. She filed the complaint to the police after some days. It is not known to her as to why she was thrown into the well by her husband and in that respect nothing is there in writing. Nothing substantial has been brought out in the cross examination. She has denied the suggestion that she fell down in the well while cutting grass. She has also denied the suggestion that the injuries sustained by her were because she collided with the walls of the well. She has also denied the suggestion that there were steps in the well.

4. Having minutely gone through the evidence on record, we are of the opinion that there is no reason for the complainant to file false complaint against the accused who is incidentally her own husband. The medical evidence clearly confirms the injuries sustained by the complainant. Dr.Binaben Parikh, PW1-Exh.6, Medical Officer of the Civil Hospital, Godhra, in her evidence has stated that at 11.50 hrs. in the morning on 13.2.1996, Kailashben was brought to the hospital with the yadi of Ghokhaba Primary Health Centre. She has further stated that she was told by the complainant that her husband pushed her into the well at about 5.00 hrs. in the morning. The complainant was admitted as an indoor patient on 13.2.1996 and was discharged on 1.4.1996. She has clearly stated that the injuries sustained by the complainant are possible in the manner in which the complainant narrated. She has stated in her cross examination that, if a person voluntarily falls into the well or falls because of accident, such injuries are possible. However, the said statement of the Doctor will not disprove the version of the complainant. The medical certificate at Exh.7 issued by Dr.Binaben Parikh reveals the history, namely, that the complainant was pushed in the well by her husband at 5.00 a.m. on 13.2.1996. There are three contused lacerated wounds (CLWs) on the parietooccipital region and two bruise

injuries on Right Suprascapular region.

5. It was contended by the learned Counsel for the appellant-accused that there are discrepancies in the evidence of the complainant as well as Dr.Binaben Parikh regarding the time of the incident. In the submission of the learned Counsel, the complainant has stated that she was pushed by her husband in the evening while as per the evidence of Dr.Binaben Parikh, the alleged incident had taken place at about 5.00 a.m. on 13.2.1996. It was, therefore, submitted that the evidence of the complainant is not reliable. It is not possible for us to accept this submission. The complainant in her evidence has not given the specific time about the alleged incident. From her evidence, it appears that the incident had taken place in the evening of 12.6.1996. She has also stated that her husband pelted bricks in the early hours of 13.6.1996 when she was found alive. With the aforesaid circumstances it is quite possible that though she might have narrated the entire incident to Dr.Binaben Parikh, the Doctor on her own, mentioned the timing as 5.00 a.m. with regard to the time of incident. Assuming that there are some discrepancies regarding the timing of the incident as per the evidence of the complainant, that fact by itself cannot come in the way of prosecution to reject the evidence of complainant on the ground that it is not a reliable evidence. She has remained consistent on the material parts of her evidence. The medical evidence clearly supports the injuries sustained by the complainant. Apart from this, there is no reason for her to file a false complaint against the accused, that too, her own husband. Nanabhai Koyabhai, PW4-Exh.12 in his evidence has also supported the version of the complainant. According to him, he heard some sound from the well while he was passing through the field of Udesinh Manubhai Parmar. He has further stated that before he heard the sound, he saw the accused in the same field. When he inquired from the accused about his presence, the accused ran away. On looking into the well, this witness saw the complainant, i.e. wife of the accused. He thereafter went to the village and called the villagers and with their help, the complainant was taken out from the well. He also saw the injuries on the complainant's head as well as on the back portion of shoulders. The evdience of Nanabhai not only supports the version of the complainant but also establishes the presence of the complainant in the well as well as the accused in the same field when the complainant was struggling for survival. The conduct of the accused of running away instead of informing about the incident to this witness Nanabhai and to seek any help from him is

clearly against the natural conduct of the innocent human beings. The conduct on the part of the accused, in our opinion, is sufficient to hold him guilty for the offence for which he was charged. After having gone through the reasoning of the learned trial Judge, we are firmly of the opinion that no interference is warranted. The learned trial Judge is justified in convicting the accused for the offence under Section 307 of the Indian Penal Code.

6. Mr.Shah, learned Addl.Public Prosecutor, however, submitted that the sentence of seven years as awarded by the learned trial Judge is not proportionate to the offence committed by the accused. In the submission of Mr.Shah, the accused by giving push and throwing his own wife into the well and also thereafter pelted bricks on her and caused injuries, is required to be dealt with seriously by giving maximum punishment.

7. We have gone through the reasoning given by the learned trial Judge especially using discretion in favour of the accused, considering the fact that the accused is having a blind old mother and nobody is there to look after her and therefore, the sentence of seven years will serve the ends of justice. We have also no exception to make with the said reasoning and confirm the conviction and sentence imposed upon the accused by the learned trial Judge. There being no substance in either of the appeals, both these appeals fail and are dismissed.

(K.R. Vyas, J.)

(Akashay H. Mehta,J.)

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